

Short Title: GSC Postponement/Judicial & Execution Sales.

A BILL TO BE ENTITLED

AN ACT TO ALIGN CERTAIN PROVISIONS FOR THE POSTPONEMENT OF JUDICIAL  
SALES AND EXECUTION SALES WITH THE CORRESPONDING PROVISIONS FOR  
POSTPONEMENT OF SALES AUTHORIZED UNDER POWER OF SALE AND TO  
MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1-339.20 reads as rewritten:

**"§ 1-339.20. Public sale; postponement of sale.**

(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than ~~six days, exclusive of Sunday,~~ 90 days after the original date for the sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than ~~six days, exclusive of Sunday,~~ 90 days after the original date for the opening of ~~bids;~~ bids if any of the following occurs:

(1) ~~When there~~ There are no bidders, or bidders.

(2) ~~When, in his~~ In the person's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any ~~casualty, or~~ casualty.

(3) ~~When there~~ There are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in ~~his~~ the person's judgment, to hold the sale on that ~~day, or day~~.

(4) ~~When he~~ The person is unable to hold the sale because of illness or for other good ~~reason, or reason~~.

(5) ~~When other~~ Other good cause exists.

The person authorized to hold the sale may postpone the sale more than once whenever any of these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale as computed pursuant to G.S. 1A-1, Rule 6.

(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through ~~his~~ the person's agent or attorney, do all of the following:

(1) At the time and place advertised for the sale or for the opening of sealed bids, publicly announce the ~~postponement thereof;~~ postponement.

(2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy thereof posted,~~ sale, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement; and~~ postponement.

(3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person ~~who~~ that submitted a bid.

(c) The notice of postponement ~~shall;~~ shall be signed by the person authorized to hold the sale, or by the person's agent or attorney, and shall state the following:

(1) ~~State that~~ That the sale is ~~postponed;~~ postponed.

(2) In the case of a sale by public auction, ~~state~~ the hour and date to which the sale is ~~postponed;~~ postponed.

(2a) In the case of a sale of timber by sealed bid, ~~state~~ the date, time, and place to which the opening of bids is ~~postponed;~~ postponed.

(3) ~~State the~~ The reason for the ~~postponement; and~~ postponement.

(4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~

(d) If a public sale is not held at the time fixed ~~therefor~~ for the sale and is not postponed as provided by this section, ~~or if a postponed sale is not held at the time fixed therefor,~~ the person authorized to make the sale shall report ~~the~~ these facts ~~with respect thereto~~ to the judge or clerk

of court having jurisdiction, who shall ~~thereupon~~ make an order for the public sale of the property to be held at such time and place and upon such notice to be given in such manner and for such length of time as ~~he~~ the judge or clerk deems advisable."

**SECTION 2.** G.S. 1-339.58 reads as rewritten:

**"§ 1-339.58. Postponement of sale.**

(a) The sheriff may postpone the sale to a day certain not later than ~~six days, exclusive of Sunday,~~ 90 days after the original date for the sale; sale if any of the following occurs:

(1) ~~When there~~ There are no ~~bidders,~~ bidders.

(2) ~~When, in~~ In the sheriff's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any ~~casualty,~~ casualty.

(3) ~~When there~~ There are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in the sheriff's judgment, to hold the sale on that ~~day,~~ day.

(4) ~~When the~~ The sheriff is unable to hold the sale because of illness or for other good ~~reason,~~ or reason.

(5) ~~When other~~ Other good cause exists.

The sheriff may postpone the sale more than once whenever any of these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale as computed pursuant to G.S. 1A-1, Rule 6.

(b) Upon postponement of ~~a~~ the sale, the sheriff ~~shall~~ shall do all of the following:

(1) At the time and place advertised for the sale, publicly announce the postponement of the ~~sale;~~ and sale.

(2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy of the notice,~~ sale, posted as provided by G.S. 1-339.52 in the case of real

property or G.S. 1-339.53 in the case of personal property, a notice of the  
postponement.

(c) The posted notice of postponement ~~shall~~ shall be signed by the sheriff and shall state  
the following:

(1) ~~State that~~ That the sale is postponed,

(2) ~~State the~~ The hour and date to which the sale is postponed,

(3) ~~State the~~ The reason for the postponement, and

(4) ~~Be signed by the sheriff.~~

(d) If a sale is not held at the time fixed for the sale and is not postponed as provided by  
this section, ~~or if a postponed sale is not held at the time fixed for the sale,~~ the sheriff shall report  
~~the these~~ facts with respect thereto to the clerk of the superior court, who shall ~~thereupon~~ make  
an order for the sale of the property to be held at such time and place and upon such notice to be  
given in the manner and for the length of time as the clerk of the superior court deems advisable,  
but nothing in this section relieves the sheriff of liability for the nonperformance of the sheriff's  
official duty."

*[Background Statutes: (Highlighting indicates particularly relevant portions.)*

**Rule 1. Scope of rules.**

*These rules shall govern the procedure in the superior and district courts of the State of North  
Carolina in all actions and proceedings of a civil nature except when a differing procedure is  
prescribed by statute. They shall also govern the procedure in tort actions brought before the  
Industrial Commission except when a differing procedure is prescribed by statute. (1967, c. 954,  
s. 1; 1971, c. 818.)*

**Rule 6. Time.**

(a) *Computation. – In computing any period of time prescribed or allowed by these rules,  
by order of court, or by any applicable statute, including rules, orders or statutes respecting  
publication of notices, the day of the act, event, default or publication after which the designated  
period of time begins to run is not to be included. The last day of the period so computed is to be  
included, unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for  
transactions, in which event the period runs until the end of the next day which is not a Saturday,  
Sunday, or a legal holiday when the courthouse is closed for transactions. When the period of  
time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and  
holidays shall be excluded in the computation. A half holiday shall be considered as other days  
and not as a holiday.*

1       (b) *Enlargement.* – When by these rules or by a notice given thereunder or by order of  
2 court an act is required or allowed to be done at or within a specified time, the court for cause  
3 shown may at any time in its discretion with or without motion or notice order the period  
4 enlarged if request therefor is made before the expiration of the period originally prescribed or  
5 as extended by a previous order. Upon motion made after the expiration of the specified period,  
6 the judge may permit the act to be done where the failure to act was the result of excusable  
7 neglect. Notwithstanding any other provisions of this rule, the parties may enter into binding  
8 stipulations without approval of the court enlarging the time, not to exceed in the aggregate 30  
9 days, within which an act is required or allowed to be done under these rules, provided, however,  
10 that neither the court nor the parties may extend the time for taking any action under Rules 50(b),  
11 52, 59(b), (d), (e), 60(b), except to the extent and under the conditions stated in them.

12       (c) *Unaffected by expiration of session.* – The period of time provided for the doing of  
13 any act or the taking of any proceeding is not affected or limited by the continued existence or  
14 expiration of a session of court. The continued existence or expiration of a session of court in no  
15 way affects the power of a court to do any act or take any proceeding, but no issue of fact shall  
16 be submitted to a jury out of session.

17       (d) *For motions, affidavits.* – A written motion, other than one which may be heard *ex*  
18 *parte*, and notice of the hearing thereof shall be served not later than five days before the time  
19 specified for the hearing, unless a different period is fixed by these rules or by order of the court.  
20 Such an order may for cause shown be made on *ex parte* application. When a motion is supported  
21 by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in  
22 Rule 59(c), opposing affidavits shall be served at least two days before the hearing. If the  
23 opposing affidavit is not served on the other parties at least two days before the hearing on the  
24 motion, the court may continue the matter for a reasonable period to allow the responding party  
25 to prepare a response, proceed with the matter without considering the untimely served affidavit,  
26 or take such other action as the ends of justice require. For the purpose of this two-day  
27 requirement only, service shall mean personal delivery, facsimile transmission, or other means  
28 such that the party actually receives the affidavit within the required time.

29       (e) *Additional time after service by mail.* – Whenever a party has the right to do some act  
30 or take some proceedings within a prescribed period after the service of a notice or other paper  
31 upon him and the notice or paper is served upon him by mail, three days shall be added to the  
32 prescribed period.

33       (f) *Additional time for Address Confidentiality Program participants.* – Whenever a  
34 person participating in the Address Confidentiality Program established by Chapter 15C of the  
35 General Statutes has a legal right to act within a prescribed period of 10 days or less after the  
36 service of a notice or other paper upon the program participant, and the notice or paper is served  
37 upon the program participant by mail, five days shall be added to the prescribed period. (1967,  
38 c. 954, s. 1; 2000-127, s. 5; 2002-171, s. 2; 2003-337, s. 2.)

39  
40 **§ 1-339.1. Definitions.**

41       (a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in  
42 an action or proceeding in the superior or district court, including a sale pursuant to an order  
43 made in an action in court to foreclose a mortgage or deed of trust, but is not

44       (1) A sale made pursuant to a power of sale

45           a. Contained in a mortgage, deed of trust, or conditional sale contract,  
46 or

47           b. Granted by statute with respect to a mortgage, deed of trust, or  
48 conditional sale contract, or

- (2) A resale ordered with respect to any sale described in subsection (a)(1), where such original sale was not held under a court order, or
- (3) An execution sale, or
- (4) A sale ordered in a criminal action, or
- (5) A tax foreclosure sale, or
- (6) A sale made pursuant to Article 15 of Chapter 35A of the General Statutes, relating to sales of estates held by the entireties when one or both spouses are mentally incompetent, or
- (7) A sale made in the course of liquidation of a bank pursuant to Article 9 of Chapter 53C of the General Statutes, or
- (8) A sale made in the course of liquidation of an insurance company pursuant to Article 30 of Chapter 58 of the General Statutes, or
- (8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or G.S. 35A-1252(14), unless any order thereunder requires, or
- (9) Any other sale the procedure for which is specially provided by any statute other than this Article.

(b) As hereafter used in this Article, "sale" means a judicial sale. (1949, c. 719, s. 1; 1971, c. 268, s. 16; 1987, c. 550, s. 12; 1989, c. 473, s. 10; 2003-221, s. 4; 2012-56, s. 5.)

**§ 1-303. Kinds of; signed by clerk; when sealed.**

There are three kinds of execution: one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and when to run out of his county, must be sealed with the seal of his court. (C.C.P., s. 258; Code, s. 442; Rev., s. 616; C.S., s. 664.)

**§ 1-339.41. Definitions.**

(a) An execution sale is a sale of property by a sheriff or other officer made pursuant to an execution.

(b) As used in this article,

(1) "Sale" means an execution sale;

(2) "Sheriff" means a sheriff or any officer authorized to hold an execution sale. (1949, c. 719, s. 1.)

**§ 1-339.42. Clerk's authority to fix procedural details.**

The clerk of the superior court who issues an execution has authority to fix and determine all necessary procedural details with respect to sales in all instances in which this Article fails to make definite provisions as to such procedure. (1949, c. 719, s. 1.)]

[Staff Note:

There is a 90-day statutory deadline for execution sales that is not applicable to judicial sales or sales under power of sale, as noted in G.S. 1-310:

**§ 1-310. When dated and returnable.**

Executions shall be dated as of the day on which they were issued, and shall be returnable to the court from which they were issued not more than 90 days from said date, and no executions against property shall issue until 10 days after entry of judgment.

Staff has inquired about the 90-day postponement as it relates to execution sales with (1) the North Carolina Board of County Commissioners, which is affiliated with the North Carolina Association of County Attorneys and (2) the North Carolina Sheriffs' Association:

(1) The Board of County Commissioners is neutral on this proposal and has no additional specific feedback.

(2) The Sheriffs' Association shared that about half of the responses they received from sheriffs and sheriffs' attorneys about this proposal had no opposition, but that the other half shared a concern regarding notice in the event of postponement up to 90 days. Some of that feedback is as follows:

"Postponing a sale for up to 90 days can create potential questions with the effectiveness of the current requirements for advertising real property sales. G. S. 1-339.52 requires posting a notice of sale for 20 days immediately preceding the sale. No problem on posting I believe as long as the notices remain posted in the appropriate places and are not removed. However, the notice of sale must also be published in a newspaper qualified for legal advertising (that is becoming a problem to some less urban counties with fewer publishing options!!!) for two successive weeks and the date of the last publication shall not be more than 10 days preceding the date of the sale . . . If the sale is postponed beyond the tenth day after the last publication of the notice of the sale, that could create a conflict that could result in the execution sale being attacked for violation of the statutory provisions on notice and advertisement as well as a potential constitutional due process notice challenge.

Current statutes do not require notifying the parties or general public of the postponement except by posting a notice of postponement and announcing the postponement at the time and place advertised for the sale . . . there is no requirement to provide notice to parties or the public beyond posting a notice of postponement on the previous notice of sale at the courthouse door or place designated by the clerk. I do not believe that type of constructive notice would be sufficient to withstand a constitutional due process notice requirement. Few people are even aware of these bulletin boards and notices. Also, covid has resulted in significant limitations on access to the courthouses and resources available.

Postponing for more than 6 days may create questions of proper notice under 5th Amendment due process requirements before permanently depriving someone of their property. Since providing notice of the postponement falls on the Sheriff currently, this could result in the sheriff being on the hook to determine what if any additional notice should be provided. Guidance should be given on providing additional notice if postponement period is lengthy.

G.S. 1-339.54 requires the sheriff to send the judgment debtor a copy of the notice of sale at least ten days before the sale of real property either in person or by registered, certified mail to last known address or serving on debtor's agent. This could be interpreted to require the sheriff to send an additional notice of sale where there is a lengthy postponement of the sale. There is nothing in the statute that limits the number of notices that must be provided where there are multiple sale dates."]

**SECTION 3.** G.S. 45-21.21 reads as rewritten:

**"§ 45-21.21. Postponement of sale; notice of cancellation.**

(a) Any person exercising a power of sale may postpone the sale to a day certain not later than 90 ~~days, exclusive of Sunday, days~~ after the original date for the ~~sale~~ sale if any of the following occurs:

(1) ~~When there~~ There are no ~~bidders, or~~ bidders.

(2) ~~When, in his~~ In the person's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any ~~casualty, or~~ casualty.

(3) ~~When there~~ There are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in ~~his~~ the person's judgment, to hold the sale on that ~~day, or~~ day.

(4) ~~When he~~ The person is unable to hold the sale because of illness or for other good ~~reason, or~~ reason.

(5) ~~When other~~ Other good cause exists.

The person exercising a power of sale may postpone the sale more than once whenever any of ~~the above~~ these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale. The 90-day time period is computed in the manner provided by G.S. 1A-1, Rule 6.

(b) Upon postponement of a sale, the person exercising the power of sale shall personally, or through ~~his~~ the person's agent or ~~attorney~~ attorney, do all of the following:

(1) At the time and place advertised for the sale, publicly announce the ~~postponement thereof;~~ postponement.

(2) On the same day, attach to or enter on the ~~original~~ notice of ~~sale or a copy thereof,~~ sale, posted at the ~~courthouse door,~~ as provided by G.S. ~~45-21.17,~~ 45-21.17(1)a., a notice of the ~~postponement; and~~ postponement.



(3) Give written or oral notice of postponement to each party entitled to notice of sale under G.S. 45-21.17.

(c) The posted notice of postponement ~~shall~~ shall be signed by the person authorized to hold the sale, or by the person's agent or attorney, and shall state the following:

(1) ~~State that~~ That the sale is ~~postponed~~, postponed.

(2) ~~State the~~ The hour and date to which the sale is ~~postponed~~, postponed.

(3) ~~State the~~ The reason for the ~~postponement~~, and postponement.

(4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~

(d) ~~If a sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the date originally fixed for the sale, then prior to such sale taking place the provisions of G.S. 45-21.16 need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be again complied with, or if on appeal, the appellate court orders the sale to be held, as to such sale so authorized the provisions of G.S. 45-21.16 need not be complied with again but those of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be. If a sale is not held at the time fixed for the sale and is not postponed as provided by this section, or if on appeal, the appellate court orders a sale to be held, then prior to the sale taking place, G.S. 45-21.16 does not apply, but G.S. 45-21.16A, 45-21.17, and 45-21.17A again apply.~~

(e) ~~A sale may be postponed more than once provided the final postponed sale date is not later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed for transactions, after the original date for the sale.~~

(f) Repealed by Session Laws 2019-243, s. 26(a), effective November 6, 2019.

(g) If it is determined that the sale cannot be held in accordance with this section or is postponed pursuant to this section, then the person exercising the power of sale shall, immediately upon determining that the sale will not occur and prior to the scheduled time of the

1 sale, deliver a written notice to the ~~Clerk of Superior Court~~ clerk of superior court that is to  
2 include all of the following:

3 (1) The case number assigned by the ~~Clerk~~ clerk.

4 (2) The ~~mortgagor(s) and record owner(s) name(s)~~ name of each mortgagor and  
5 record owner.

6 (3) The United States Postal Service address of the property or, if no address has  
7 been assigned, a brief description of the location of the property.

8 (4) The originally scheduled date and time for the sale.

9 (5) A statement that the foreclosure sale has been withdrawn, rescheduled for a  
10 specific date and time, or postponed with no date yet set, as appropriate.

11 (h) If the notice required by subsection (g) of this section is not received by the ~~Clerk~~ clerk  
12 prior to the scheduled time of the sale, then the person exercising the power of sale shall  
13 personally, or through ~~his or her~~ the person's agent or attorney, do all of the following:

14 (1) At the time and place advertised for the sale, publicly announce the  
15 ~~cancellation thereof~~; cancellation.

16 (2) On the same day, attach to or enter on the ~~original~~ notice of sale or a copy  
17 thereof, ~~sale,~~ posted at the courthouse door, as provided by  
18 G.S. ~~45-21.17~~; 45-21.17(1)a., a notice of the ~~cancellation~~; cancellation.

19 (3) Give written or oral notice of cancellation to each party entitled to notice of  
20 sale under G.S. ~~45-21.17~~; and 45-21.17.

21 (4) Hand-deliver the written notice required under subdivision (2) of this  
22 subsection to the ~~Clerk's~~ clerk's office.

23 (i) So that the notice required by subsection (g) of this section may be delivered in the  
24 time frame ~~required therein~~; required, the ~~Clerk's~~ clerk's office shall, upon request, provide to the

person exercising the power of sale an ~~e-mail~~ email address ~~and/or~~ fax telephone number  
number, or both, to use for delivery of ~~said~~ notices.

(j) Should the ~~Clerk's~~ clerk's office be unexpectedly closed on the day of the sale, the  
requirements of ~~this subsection shall be~~ (g) of this section are delayed until the next day the ~~Clerk's~~  
clerk's office is open for transactions.

(k) All notices of a scheduled foreclosure sale, withdrawal of a scheduled sale, or  
postponement of a scheduled sale shall, on the day of receipt by the ~~Clerk,~~ clerk, be posted by  
the person exercising the power of sale in the location at the county courthouse normally used  
for the posting of public notices. If a scheduled sale has been withdrawn, ~~that the~~ notice shall  
remain in ~~that the~~ location for no less than 30 days. If the sale has been postponed, ~~that the~~ notice  
shall remain in ~~that the~~ location until it is replaced by a notice of a rescheduled sale or of a  
withdrawn sale.

(l) The delivery of notices required by this section in no way removes any responsibility  
of any party to file documents with the ~~Clerk~~ clerk as required elsewhere by law.

(m) A clerk of superior court may report habitual noncompliance with ~~this subsection~~ (g)  
of this section to the Administrative Office of the Courts."

[Staff Note:

According to the North Carolina Supreme Court, "Non-judicial foreclosure by power of sale  
arises under contract and is not a judicial proceeding. . . The General Assembly has crafted  
Chapter 45 to be the comprehensive and exclusive statutory framework governing non-judicial  
foreclosures by power of sale . . . The Rules of Civil Procedure do not apply unless explicitly  
engrafted into the statute." *In re Lucks*, 794 S.E. 2d 501, 505 (N.C. 2016).]

[Background Statute:

**§ 45-21.17. Posting and publishing notice of sale of real property.**

In addition to complying with such provisions with respect to posting or publishing notice of  
sale as are contained in the security instrument,

(1) Notice of sale of real property shall

- a. Be posted, in the area designated by the clerk of superior court for  
posting public notices in the county in which the property is situated,  
at least 20 days immediately preceding the sale.
- b. And in addition thereto,

1. *The notice shall be published once a week for at least two successive weeks in a newspaper published and qualified for legal advertising in the county in which the property is situated.*
  2. *If no such newspaper is published in the county, then notice shall be published once a week for at least two successive weeks in a newspaper having a general circulation in the county.*
  3. *In addition to the required newspaper advertisement, the clerk may in his discretion, on application of any interested party, authorize such additional advertisement as in the opinion of the clerk will serve the interest of the parties, and permit the charges for such further advertisement to be taxed as a part of the costs of the foreclosure.*
- (2) *When the notice of sale is published in a newspaper,*
- a. *The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than seven days, including Sundays, and*
  - b. *The date of the last publication shall be not more than 10 days preceding the date of the sale.*
- (3) *When the real property to be sold is situated in more than one county, the provisions of subdivisions (1) and (2) shall be complied with in each county in which any part of the property is situated.*
- (4) *The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, including single-family residential real property, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.*
- (5) *Repealed by Session Laws 1993, c. 305, s. 10.*
- (6) *Any time periods relating to notice of hearing or notice of sale that are provided in the security instrument may commence with and run concurrently with the time periods provided in G.S. 45-21.16, 45-21.17, or 45-21.17A.]*

**SECTION 4.** This act is effective when it becomes law and applies to sales noticed

on or after that date.